Unintended Consequences: Assessing the Impact of *Dobbs v Jackson* (2022) on the Provision of Maternal Healthcare in Cases of Obstetric Emergencies in the United States

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01. Introduction

The landmark *Dobbs v Jackson Women's Health Organization* (2022) decision determined that the United States Constitution does not confer a right to abortion, and as such turned the issue back to individual states to legislate. The decision effectively overturned *Roe v Wade* (1973), which posited that abortion was protected under the right to privacy under the 14th amendment of the United States Constitution. Dobbs prompted a cataclysmic shift in reproductive healthcare policy across many states. While some states maintained and, in some cases, even bolstered protections for reproductive healthcare, other states swiftly acted to restrict it. Such restrictions vary greatly, from including exceptions to save the life of the mother to excluding all exceptions. Therefore, despite the fact that many associate Dobbs solely with abortion, there are considerable public health implications for other facets of maternal healthcare.

02. Objective and Methodology

This research aims to assess the unintended consequences of Dobbs, particularly within the realm of obstetric emergencies. Vague wording in state level policy, specifically in regard to exceptions, not only creates massive confusion for providers, but in turn endangers the life and health of pregnant individuals. While the only way to completely ensure that women will have access to reproductive healthcare that prioritizes their health, safety, and wellbeing is through complete decriminalization, creating more explicit and comprehensive exceptions within state level policy could mitigate the risk of severe and potentially fatal health impacts on pregnant individuals. To illustrate the substantial health risks associated with highly restrictive abortion policies that exclude comprehensive exceptions, I will examine cases from 2 states with such policies: Texas and Idaho. Both of these states, in addition to being restrictive, lack exceptions for the health of the mother, instead only allowing emergency abortion care in cases when the life of the mother is in danger.

03. Texas

According to the Guttmacher Institute, Texas has some of the most restrictive abortion policies in the country. There are no exceptions to this policy in cases of rape or incest, nor is there a specific health exception (Felix, Sobel, and Salganicoff 2023). Abortion in Texas is only legal to protect the life of the mother, which creates confusion among providers and results in horrific treatment towards pregnant women. Further, under Texas law, providers who perform abortion in unsanctioned circumstances risk revocation of medical licenses, massive fines, and substantial prison time, up to life sentences (Vertuno and Stengle 2024).This seemingly intentional immobilization of healthcare providers through the threat of legal penalties strengthens restrictions by forcing providers to second guess decisions they would normally make in obstetric emergencies. It is no surprise that this threat, coupled with restrictions and vague exceptions have had severe consequences on pregnant people in Texas. On March 6th, 2023, the Center for Reproductive Rights filed a lawsuit against the state of Texas, initially on behalf of five women who were denied emergency abortion care and two obstetrician-gynecologists, which sought to improve access to emergency abortion care by clarifying exceptions (Ray 2023). The number of plaintiffs in Zurawski v. State of Texas eventually grew to twenty-two, including twenty women who were denied abortion care in emergency situations.

Amanda Zurawski spent several days in the ICU after doctors refused to perform an abortion following a preterm pre-labor rupture of membranes (PPROM) at 18 weeks of gestation. Given substantial risk of sepsis for the mother and almost negligible fetal survival rates, abortion is the preferable treatment option. However, as she put it, "my doctor could not intervene as long as my heart was beating or until I was sick enough for the ethics board at the hospital to consider my life at risk and permit the standard of healthcare I needed at that point--an abortion" (Zurawski 2023). Zurawski developed severe sepsis, and only then did she receive the care she needed. However, as a result of the infection, one of her fallopian tubes has become permanently closed, which greatly impedes her ability to have children in the future.

Anna Zagarian and **Lauren Miller** also experienced obstetric emergencies during their pregnancies, and both women had to travel to Colorado to receive the care they needed after being denied care from providers in Texas. Zagarian sought treatment in an emergency room in Texas after her water broke at 19 weeks of gestation, where she was told that her baby would not survive and that she was at severe risk for infection. However, she could not receive abortion care in Texas and had to travel to Colorado. Miller presented to the emergency department when 8 weeks pregnant with twins with hyperemesis gravidarum. This persisted for several weeks, and eventually during one of her emergency room visits, one of her twins was diagnosed with trisomy 18, which is a fatal condition. A fetal reduction abortion procedure is the appropriate treatment in order to ensure the survival of the second fetus as well as Miller, but doctors would not perform the procedure because of Texas abortion bans, so Miller also had to travel to Colorado.

04. Idaho

Just like Texas, Idaho is considered to have some of the most restrictive abortion policies in the country according to the Guttmacher Institute. There are no health exceptions to these policies; abortion is only legal to prevent the death of the pregnant person (Felix, Sobel, and Salganicoff 2023). However, unlike Texas, there are exceptions for rape and incest. Furthermore, anyone caught providing abortion care outside of the narrow exceptions can receive a punishment of up to five years in prison. These narrow exceptions, coupled with the threat of prison time, greatly hinder the ability of physicians to care for their patients in a timely manner. As Dr. Jack Resneck, former president of the American Medical Association puts it, "Idaho's law forces physicians in these (emergency) situations to delay care until a patient's medical condition deteriorates to the point of becoming life-threatening" (2024). Essentially, physicians know what treatment patients need in obstetric emergencies, but have to wait until they are quite literally on the brink of death to provide it in order to be in compliance with Idaho's strict abortion laws. This not only causes unnecessary harm, but greatly increases the risk of severe injury or death for pregnant people. There have been several legal challenges regarding the status of emergency abortion care in Idaho, the most prominent being Idaho v United States (2024), a Supreme Court case that took up the question of whether or not emergency abortion care is a constitutionally protected right. On January 5th, 2024, the Supreme Court issued a stay that suspended legal protections from EMTALA and caused considerable harm to pregnant people. Specifically, in just three months following the stay being put in place, six patients were airlifted out of the state as a result of pregnancy complications (Talukder 2024). This sparked national outrage, "There are few clearer and starker examples of how women disproportionately bear the consequences of the politicization of medicine at the hands of a politicized judiciary" (Talukder 2024). On June 27th, 2024, the Supreme Court dismissed the case on procedural grounds, which technically vacated the stay and allows emergency abortion to continue as it was prior to the stay in Idaho under EMTALA, but does not solidify emergency abortion as a constitutionally protected right. Another critical legal challenge is Adkins v. State of Idaho, a case that is still pending in the Idaho court system. The case was brought by four women that were denied emergency abortion care, two physicians, and the Idaho Academy of Family Physicians. The plaintiffs sought to expand access to emergency abortion in the state, particularly to include exceptions for fatal fetal anomalies as well as the health of the pregnant person.

Jennifer Adkins was 12 weeks pregnant when she was told that the fetus had skin edema and cystic hygroma, as well as Turner syndrome, all of which come with incredibly high mortality rates. Further, Turner syndrome typically results in miscarriage, and if somehow Adkins did not miscarry, she was likely to develop mirror syndrome, which could result in severe health complications. While the course of treatment for these conditions would involve abortion care in almost all circumstances, Idaho's abortion ban prevented Adkins from receiving care, and she was forced to travel to Oregon to receive the care she needed.

Kayla Smith was 19 weeks pregnant when she discovered that her baby had an untreatable congenital heart condition. Smith also had experienced preeclampsia with her previous child, and her doctors warned her that she would be at a heightened risk for experiencing preeclampsia again. Given that that the fetus was not viable and the risks for Smith's health, she asked for abortion care, but doctors in Idaho could not perform it due to the restrictions. Smith then spent thousands of dollars to travel to Washington to receive care.

05. Policy Implications

Clearly, Texas and Idaho, two states that lack health exceptions for abortion care, have seen increased rates of injury and near death during obstetric emergencies. Alternatively, while other abortion policies across the country are still considered restrictive, such as in Alabama and Florida, the inclusion of a health exception has mitigated, to some extent, the tragic consequences of such policy in obstetric emergencies (Felix, Sobel, and Salganicoff 2023). Therefore, it is imperative that states who refuse to decriminalize abortion consider clarifying exceptions in order to reduce harm to pregnant people. Most basically, including provisions for health exceptions as opposed to solely life exceptions will minimize harm to women experiencing obstetric emergencies. Further, removing penalties for healthcare providers that provide abortions in "unsanctioned" circumstances will allow providers to fulfil their oath and act in the best interest of their patients. Current penalties immobilize providers and force them to choose between providing care they know that a patient needs and potentially spending life in prison. In order to allow providers to give adequate care in emergency situations where time is of the essence, such penalties must be removed.

06. Conclusion

Put simply, *Dobbs* has resulted in the implementation of stringent abortion restrictions in Texas and Idaho with intentionally narrow exceptions. These restrictions have resulted in the unnecessary injury and the near death of pregnant people. In order to combat this, and to reduce harm to women in states that are unwilling to put policies in place to protect reproductive healthcare broadly, exceptions must be more comprehensive and explicit. A lack of inclusivity and specificity with regards to "health" or "life" exceptions can produce a climate of ambiguity, uncertainty, and inaction, impeding appropriate, timely, and life-saving intervention in obstetric emergencies. Criminal penalties for providers in non-compliance with abortion policy further discourages, and in some cases prevents, interventions that prioritize the life, health, and well-being of the mother. Expanding and more clearly delineating exceptions, and eliminating criminal penalties for providers, can reduce the most severe detrimental health impacts on women in restricted states. The most effective way to minimize health risks altogether, however, as evident in data comparisons between highly restricted states, and states with enshrined legal protections to abortion, is through broad decriminalization and a commitment to a reproductive justice framework.

References

Center for Reproductive Rights. 2023. "Center Expands Work on Behalf of Patients Denied Abortion Care despite Grave Pregnancy Complications." Center for Reproductive Rights. September 12, 2023. https://reproductiverights.org/exceptions-complaints-idaho-tennessee-oklahoma/.

Felix, Mabel, Laurie Sobel, and Alina Salganicoff. 2023. "A Review of Exceptions in State Abortions Bans: Implications for the Provision of Abortion Services." KFF. May 18, 2023. https://www.kff.org/womens-health-policy/issue-brief/a-review-of-exceptions-in-state-abortions-bans-implications-for-the-provision-of-abortion-services/.

Guttmacher Institute. 2022. "Interactive Map: US Abortion Policies and Access after Roe." States.guttmacher.org. 2022. https://states.guttmacher.org/policies/texas/abortion-policies.

Ray, Nat. 2023. "Remarks at Press Conference by Plaintiffs in Zurawski v. State of Texas." Center for Reproductive Rights. March 8, 2023. https://reproductiverights.org/zurawski-texas-plaintiffs-remarks-press-conference/.

Resneck, Jack. 2024. "Idaho Abortion Law Undermines Core Medical Ethics." American Medical Association. April 22, 2024. https://www.ama-assn.org/about/leadership/idaho-abortion-law-undermines-core-medical-ethics#:~:text=The%20Idaho%20Defense%20of%20Life

Talukder, Sabrina. 2024. "Supreme Court Dismisses Idaho v United States without Making a Decision on Emergency Abortion Care." June 27, 2024. https://www.americanprogress.org/article/supreme-court-dismisses-idaho-v-united-states-without-making-a-decision-on-emergency-abortion-care/.

"The PPROM Foundation - PPROM Facts." n.d. Www.aapprom.org. https://www.aapprom.org/community/ppromfacts.

Vertuno, Jim, and Jamie Stengle. 2024. "Texas Supreme Court Rejects Challenge to State's Abortion Law over Medical Exceptions." AP News. May 31, 2024. https://apnews.com/article/texas-abortion-ban-lawsuit-supreme-court-ruling-53b871dcd40b2660604980e5daa19512.